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Subject: Attention Docket ID No. A-2002-04

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U.S. Environmental Protection Agency  
EPA West (Air Docket)  
1200 Pennsylvania Ave.  
NW Room: B108, Mail Code: 6102T  
Washington, DC 20460

Attention: Docket ID No. A-2002-04

As the State of Wisconsin's lead manager over air pollution control permitting issues, I am appreciative of the opportunity to comment on EPA's December 31, 2002 proposed revisions to the regulations governing the New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act. The proposed changes that have been made available for comment that I am referring to are intended to provide a future category of activities that would be considered to be routine maintenance, repair and replacement (RMRR) under the NSR program. According to the December 31, 2002 proposal, "the changes are intended to provide greater certainty without sacrificing the current level of environmental protection and benefit derived from the program" and that it is the belief of EPA "that these changes will facilitate the safe, efficient, and reliable operation of affected facilities".

There are approximately 500 facilities located within Wisconsin's borders that are subject to the NSR program, which has been approved into Wisconsin's State Implementation Plan. While the NSR program currently provides an exclusion from program applicability for projects that are considered RMRR, the term is not well defined nor is there adequate guidance on the use of this exclusion. Thus, Wisconsin's air permit program is called upon to address applicability inquires of NSR regulated facilities for projects that the facility may consider RMRR, but are uncertain as to whether the State would agree. Since Wisconsin is obligated to use scarce air permitting resources to address these inquires, I am encouraged by the fact that EPA has sought to provide greater certainty to the exclusion, as it is definitely needed. However, after reviewing EPA's proposed regulatory revisions, I do not believe that the RMRR exclusion has been made any less complex and that while the proposal may provided certainty in some areas of the exclusion, it has created additional areas of uncertainty within the proposed revisions.

I am also not of the opinion that the proposal has accomplished EPA's intent to maintain "the current level of environmental protection and benefit derived from the (NSR) program". After careful review of the proposed regulatory changes, I am convinced that capital projects would be allowed that would cause significant increases in actual emissions without the application of modern control technology, ambient air quality impact analysis or offsetting of the emission increase in nonattainment areas. Although EPA has attempted to include safeguards to protect against air quality impacts, the proposal falls short in providing this assurance. Although projects that would result in increases in maximum achievable

hourly emission rates, construction of new process units or replacement of an entire process unit, would not be allowed under the proposed regulation, these "safeguards" are much too broad to provide any meaningful limitations to the application of the proposed regulatory change that would be protective of air quality standards nor is there a mechanism provided to assess the change's ambient air quality impacts.

EPA has proposed to exempt from NSR activities that are conducted within an annual maintenance, repair and replacement allowance. Although EPA has proposed that projects that can be considered under such an allowance for exclusion from NSR are those that "facilitate, restore or improve the efficiency, reliability, availability or safety" of the source, this consideration ignores the matter of whether any such activity is routine. Given the broad nature of the terms used to consider activities under such an allowance, virtually any change to existing equipment or process lines could fall under the allowance umbrella. Any such use of an allowance for classifying projects as RMRR should not lose sight of the intent of the exclusion, which is to address activities that are routine maintenance, repair and replacement and reasonable boundaries should be set to insure this criteria.

EPA has proposed to continue case-by-case determinations of routine maintenance, repair and replacement for projects that fall outside the annual allowance. Routine maintenance, repair and replacement activities are activities that are commonplace within industry sectors and thus the associated costs can be anticipated. As such, these costs should be included in any allowance for routine maintenance, repair and replacement activities. Thus, case-by-case determinations of projects that fall outside the annual allowance should not be included as an option, if the annual allowance concept is adopted. While there are maintenance, repair and replacement activities that are routine but not taken on annually, annual allowances should be established on a rolling average basis in order to avoid allowances that have been set arbitrarily high to accommodate activities that are not conducted annually. Allowances for terms that are longer than one year should not be considered in lieu of a rolling average as enforceability and management of such approaches will be highly difficult.

The method that has been proposed for the use of the annual maintenance, repair and replacement allowance is problematic from an air quality management perspective and contrary to the fundamental purpose of the NSR program. EPA has proposed under the annual allowance concept that in instances when a facility has determined that it has exceeded its annual maintenance, repair and replacement allowance, the project that incurred the highest monetary cost is no longer included within the allowance. Because the highest cost project may have been completed prior to the examination of the project that ultimately results in the allowance being exceeded, under the proposed rule, the review of the highest cost project requires a retroactive review under the case-by-case review approach. Should the source be unable to demonstrate that the project was routine maintenance, repair or replacement, it would be subject to NSR retroactively. This is contrary to the NSR program since it is intended to examine the impacts of major modifications before they have commenced. Since routine maintenance, repair and replacement activities can be anticipated and planned for on an annual basis, projects to be excluded from NSR under the annual allowance approach should be conducted prior to the each allowance period.

As an alternative to the annual maintenance, repair and replacement allowance, I recommend that EPA develop a proposal that would establish criteria for characterizing whether a change is routine. Such criteria should provide for detailed safeguards against changes that would likely result in emissions increases. In addition, to add certainty and to

streamline the process, EPA should develop lists identifying activities that would and would not be considered routine for each major industrial sector. For projects and industry sectors that would not be listed, the case-by-case determination process should remain available and EPA should maintain a database of such projects for consideration of inclusion on either list on a later date. Such an approach will provide certainty to the program while maintaining the proactive nature of the NSR program. Thank you once again for the opportunity to comment on this proposal.

Sincerely,  
/s/

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